February 9, 2007

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: WC Docket No. 06-210
CCB/CPD 96-20

COMMENTS REGARDING PETITIONERS REQUEST FOR RECONSIDERATION AND CLARIFICATIONOF FCC ORDER OF JANUARY 12, 2007

To Whom It May Concern:

In response to the Petitioner's February 8, 2007 request to have the Federal Communications Commission (FCC) revisit and/or reconsider its January 12, 2007 order, whereby Petitioner believes that the order specifically and clearly limited the review of the FCC to only the "transfer issue relating to AT&T Filed FCC Tariff No. 2, Section 2.1.8, and not to the other "open issues" implicitly included within the District Court's referral; Combined Companies Inc., (CCI) and I (collectively "we") would like to address a few points after reviewing petitioners request for reconsideration.

1. Although we do not agree with petitioners that the Jan.12th 2007 FCC Order was designed to "notice" the public and petitioners that the FCC was ONLY going to consider the transfer issue, we do believe the order needs clarification. As petitioners believe, we believe the Judge Bassler Order

intended to have all "open issues" addressed. What does "other open issues" mean? If you only had the one "traffic only" transfer issue outstanding, you wouldn't need to say other open issues.

2. In fact, AT&T, notwithstanding its continuing writings to the contrary, also agrees that the FCC **should and MUST now hear and decided ALL the Declaratory Rulings** sought by the petitioner in its September 2006 filing to the FCC.[1]

3. The FCC's Public Notice, released November 22, 2006, relating to DA 06-2360, CCB/CPD 96-20, inviting comments on a Declaratory Ruling filed by One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. and Winback & Conserve Program, Inc., was issued to resolve the issues under section 2.1.8 of AT&T's Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion in *AT&T Corp. v. FCC*, 394 F.3d 933 (D.C. Cir. 2005).

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[1] **AT&T's brief to the District Court 6/13/05 Page 2 para 3:**

Rather than reinstitute the proceedings at the FCC, the Inga Companies have now asked this Court to resolve the **open issues** and to rule on a series of technical issues of tariff interpretation. Under their view, the Court should now determine such matters as whether the phrase "all obligations" in Section 2.1.8 somehow excludes minimum volume/term commitments; whether these commitments are part of the "minimum payment periods" within the meaning of 2.1.8; **whether the plans in question are "pre 1994" plans to which shortfall charges allegedly could not apply;** and what significance was of AT&T's withdrawal of a subsequent tariff transmittal--and to resolve these tariff issues in a manner consistent with the **nondiscrimination requirements** of 47 U.S. C. Section 202(a) and of the FCC's implementing regulations. ***All* these issues were previously raised in the FCC and the DC Circuit proceedings, and all these issues can be efficiently decided by the FCC now--under the DC Circuit Decision.**

4. Were petitioners actually told by the FCC that petitioners were not allowed to request declaratory rulings, because they can only originate from a Court? If petitioners were actually told that by the FCC, it would be a total absurdity. As petitioner's advised in their filing(s), FCC General Counsel Schlick was absolutely correct in stating the petitioners could bring forth its own Declaratory Ruling requests.

5. We hope that the confusion by petitioners is their fear that the FCC believes that the referral from Judge Bassler does not encompass all other issues; however that can not mean that the other issues are not on the table due to petitioner's requests. The FCC can not possibly be saying that after 12 years of waiting the FCC will not resolve all these issues after having all these issues briefed. It appears as if the FCC is taking advantage of the uninformed petitioners.

6. The petitioners are now thinking of contacting the District Court to get referrals for issues that it has already asked to rule on by the Courts deadline. If the petitioners go back to the District Court and explain that the issues are already briefed the District Court is going to look at the FCC's Jan 12th 2007 Order and be totally dumbfounded and wonder what is going on at the FCC.

7. The FCC cannot let AT&T is trying to "have it both ways". When issues are before the courts' they are "interpretive" and therefore need to be resolved by the FCC. When they are before the FCC they claims that there are issues of fact in dispute. How long can this charade be allowed to continue. AT&T has turned this entire process into comedy routine changing its position in every venue. AT&T says it is a disputed fact without producing evidence. Surely the FCC will not allow itself to be part of this ruse.

8. We can not understand how the FCC could decide what's on the table before all parties completed public comments (assuming that petitioner's interpretation of the FCC's January 12, 2006 order is correct)? The real question that the FCC must answer is not does the Bassler referral encompass "all" issues, but are the rulings that petitioners requested going to be resolved? Both CCI and I have confidence that the FCC WILL do its congressionally mandated job, and interpret the matters before it – which are not matters of DISPUTED FACT, but rather matters of DISPUTED INTERPRETATION.

9. And what does AT&T have to say on these matters. Well, when petitioner attempts to bring them before the court(s), AT&T had this to say:

AT&T's brief to the District Court 6/13/05 Page 2 para 3, con't:

> In light of the DC Circuits decision, it is understandable that the Inga Companies would want to try to shift forums mid-stream and to re-litigate these technical tariff and other issues in a Court outside the DC Circuit. But this forum shopping is not only itself illicit; it is barred by the terms of this Courts stay, by the Third Circuit's earlier mandate and by the doctrine of primary jurisdiction.

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> The Inga Companies did not respond to the DC Circuit's January 2005 Opinion by asking the FCC to revisit the question of tariff interpretation in light of the Courts of Appeal's rejection of the FCC's initial interpretation. The Inga Companies did not act even though they solicited the advice of the FCC's General Counsel, who told the Inga Companies that they have the option to pursue further proceedings with the FCC to address any issues that were left open by the DC Circuit's Opinion (Brown Aff., Ex. K) Instead, Plaintiffs filed in this Court a series of Certifications from Mr. Inga and later this motion in this Court in an attempt to have this Court, not the FCC, decide the tariff interpretation issues that this Court and the Third Circuit have held to be matters for the FCC (and the DC Circuit).

Page 12 para 2:

> In particular, before it made these precise claims in its motion to lift the stay, the Inga Companies had argued both before the FCC and the DC Circuit that [ ] (6) that other transfers that occurred in the past also support the Inga Companies' positions. Obviously, the Inga Companies made these claims to the FCC because they knew full well that these issues were encompassed within this Court's and the Third Circuit's primary jurisdiction referrals, and these epitomize the technical issues of tariff interpretation and communications policy that fall within the FCC's primary jurisdiction. That confirms that the issues cannot be adjudicated in this Court under its prior order and the Third Circuit's mandate.

10. We believe that petitioners don't need to go to the District Court. However, if we are wrong, and the FCC, in fact, will not itself interpret the tariff(s) that AT&T abused in its dealings with CCI and petitioners, then perhaps petitioners should seek a writ of mandamus from the DC Circuit if

the FCC states it is not resolving all open issues of tariff interpretation. CCI believes that after 12 years the DC Circuit will find the Commissions inactions unreasonable and question why the FCC appears to be unreasonably favoring AT&T.

11. The other point that the petitioners raised regarding whether the District Court should expand the existing referral or issue another one should not even come into play. The FCC needs to clarify right now what it intends to resolve. Please excuse my frustration but the CCI and the petitioners have first hand experience in AT&T's legal strategy of the **3 D's: DENY, DELAY, DEFEND**! And, look how successful that has been – we're 12 years into this matter!

12. This ongoing strategy by AT&T must come to an end. The matters before the FCC today as raised by the petitioners – excluding the issues of tax violations, which petitioners initially requested to have combined – MUST be resolved through interpretation by the FCC.

13. Accordingly, we urge to FCC to clarify the FCC Oct 12th Order stating affirmatively what the FCC intends to resolve before petitioners file with the District Court – only to have the matter directed right back to the FCC for its "interpretations" - continuing to unnecessarily burden the petitioners and

CCI in its pursuit of rulings that we believe will show AT&T's conduct was outside its obligations under the tariffs it filed with the FCC in its dealings with CCI and petitioner; and its unilateral actions in applying shortfall liabilities incorrectly on CCI's end-user bills was in clear violation of its tariffs (and, thereby an "illegal remedy"), which put both CCI and petitioner out of business, and was the leverage AT&T used to fraudulently induce CCI to unjustly settle with AT&T.

Respectfully submitted,

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Larry G Shipp and Combined Companies, Inc.